LEMBAGA LEBUHRAYA MALAYSIA v. LOW FOOK LAI & ORS

HIGH COURT MALAYA, JOHOR BAHRU
CHOO KAH SING J
[ORIGINATING SUMMONS NO: JA-24NCVC-700-11-2016]
15 AUGUST 2019

LAND LAW: *Acquisition of land – Compensation – Enquiry held by Land Administrator to determine amount of compensation payable to three land owners – Compensation accepted by land owners without appeal – Paymaster obtained High Court extension order – Land owners not served and not made parties – Paymaster obtained a High Court land reference order for refund by land owners of overpayment – Land owners not made parties – Right of hearing of land owners – Whether rule of natural justice breached – Whether claim by Paymaster ought to be dismissed*

The plaintiff was the paymaster of a land acquisition exercise involving a piece of land of the three defendants ('the scheduled land') in 2004 pursuant to the Land Acquisition Act 1960 ('the Act'). The Land Administrator held an enquiry to determine the compensation amount for the acquisition of the scheduled land. On 18 July 2005, the Land Administrator awarded the defendants the compensation awards as follows: Low Fook Lai RM6,158,000; Lee Chai Eng RM6,771,000 and Siaw Swee Mie RM6,771,000. Sometime in September 2005, the plaintiff through the Land Administrator paid the defendants compensation awards. In July 2006, the plaintiff filed an originating summons for an extension of time to lodge Form N to object to the award of the Land Administrator dated 18 July 2005. The plaintiff succeeded in obtaining an order by consent dated 7 October 2009 (the 'extension order'). Subsequently, a Form N was lodged on 23 October 2009. The Land Administrator then referred the objection to the court by filing Form O, listing all three defendants as interested parties, but the address of the defendants stated in the Form O was No. 8, Jalan Cokmar, Taman Sri Tebrau, 80050 Johor Bahru, which is the first defendant's address. A land reference proceeding was held at the High Court *via* suit No. 15-20-2010. On 4 November 2011, the High Court, assisted by two assessors, held that the Land Administrator had made an overpayment of the compensation awards amounting to RM3,518,634. The three defendants land owners were not made parties to the plaintiff's civil suit or application. The plaintiff's claim was based on the principle of unjust enrichment and the land reference order of 4 November 2011 of the High Court, assisted by two assessors, which found that the Land Administrator had made an overpayment to the three land owners amounting to RM3,518,634. The plaintiff, the Lembaga Lebuhraya Malaysia as the paymaster, therefore claimed the said overpayment against the three land owners who had earlier accepted the Land Administrator's awards without objection or appeal. The

defendants raised several grounds objecting to the plaintiff's claim. Two of the grounds of objections were considered by the judge, *viz*, item (ii) the defendants were not aware of and were not made parties to the application for the extension order of 7 October 2009, and item (iii) the land reference order of 4 November 2011 could not be binding on the defendants because they were not parties to the said land reference order.

Held (dismissing claim with costs of RM10,000 to each defendant):

(1) Based on the legal proposition of the apex court, the defendants ought to have been given a right to be heard in the land reference proceeding. (para 35)

(2) A breach of natural justice, *vis-a-vis* the right to be heard, had indeed occurred on two occasions. One was during the application for the enlargement of time to file Form N where all the three defendants were not given a right to be heard. Another one was at the hearing of the land reference proceeding which led to the decision of the land reference order for which all the three defendants were not given a right to be heard. (para 36)

(3) Based on the exception to the general rule, the extension order was made in violation of natural justice. Hence, it attracted the inherent jurisdiction of this High Court to set aside the extension order *ex debito justitiae* without the defendants having to go through an appeal procedure. As a result, the subsequent proceeding premised on the extension order was irregular. The land reference order, which was made based on an irregular proceeding, must fall. (para 37)

(4) Based on the analysis and findings, the court was of the considered view that the plaintiff failed to sustain its claim that was premised on the land reference order which must fall on the ground that the land reference proceeding was irregularly brought as a consequence of the extension order being set aside on grounds of violation of natural justice. (para 42)

Case(s) referred to:

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia [2015] 1 CLJ 44 CA ***(refd)***

Hock Hua Bank Bhd v. Sahari Murid [1980] 1 LNS 92 FC ***(refd)***

Isaacs v. Robertson [1985] AC 97 ***(refd)***

Kheng Chwee Lian v. Wong Tak Thong [1983] 2 CLJ 191; [1983] CLJ (Rep) 195 FC ***(refd)***

Ng Kam Loon & Ords v. Director of Public Works Department, Johore & Anor [1990] 1 LNS 23 HC ***(refd)***

Puah Bee Hong & Anor v. Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Robert Teo Keng Tuan, Intervener) & Another Case [1994] 2 CLJ 705 SC ***(refd)***

Setia Usaha Tetap Kementarian Pelajaran v. Collector of Land Revenue, Butterworth [1972] 1 LNS 131 HC ***(refd)***

Siaw Swee Mie v. Lembaga Lebuh Raya Malaysia [2018] 4 CLJ 196 CA ***(refd)***

Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor And Other Appeals [2018] 4 CLJ 285 FC ***(refd)***

Yee Seng Plantations Sdn Bhd v. Kerajaan Negeri Terengganu & Ors [2000] 3 CLJ 666 CA ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 38(4), 47(1), (2), (3)

Other source(s) referred to:

KV Padmanabha Rau, Land Acquisition in Malaysia: Cases and Commentaries, Kuala Lumpur, ILBS, 2000, p 306

For the plaintiff - Adi Radlan & Chok Chin You; M/s Adi Radlan & Co

For the 1st & 2nd defendants - Wong Kim Fatt, Yee Chew Wei, Wong Boon Cheng & Chua Yee Leng; M/s Vooi & Yee

For the 3rd defendant - M Thomas Philip & Aliff Benjamin; M/s Thomas Philip

JUDGMENT

Choo Kah Sing J:

Introduction

[1] The plaintiff in the re-amended originating summons (encl. 70) prays, *inter alia*, for a refund of RM3,518,634 (hereafter 'the overpaid amount') from the defendants being the overpayment of a compensation amount in a land acquisition exercise involved the defendants' land. The decision on the overpayment was decided by the High Court in a land reference proceedings *via* Suit No: 15-20-2010 on 4 November 2011 (hereafter 'the land reference order').

[2] This court has heard and read the parties' counsel's submissions and below is the reasoning for the decision of this court.

Brief Facts

[3] The plaintiff is the paymaster of an acquisition exercise which involved a piece of land known as GM 920, Lot 170, Mukim Plentong, Negeri Johor (hereafter 'the scheduled land') in 2004 pursuant to the Land Acquisition Act 1960 (hereafter 'the Act'). The Land Administrator held an enquiry to determine the compensation amount for the acquisition of the scheduled land. On 18 July 2005, the Land Administrator awarded the defendants the compensation awards as follows:

Low Fook Lai	RM6,158,000.00
Lee Chai Eng	RM6,771,000.00
Siaw Swee Mie	RM6,771,000.00

[4] Sometime in September 2005, the plaintiff through the Land Administrator paid the defendants the compensation awards. In July 2006, the plaintiff filed an originating summons for an extension of time to lodge Form N to object to the award of the Land Administrator dated 18 July 2005; the plaintiff succeeded in obtaining an order by consent dated 7 October 2009 (hereafter 'the extension order'). Subsequently, a Form N was lodged on 23 October 2009. The Land Administrator then referred the objection to the court *via* the filing of Form O. The Form O listed all three defendants as interested parties, but the address of the defendants stated in the Form O is No. 8, Jalan Cokmar, Taman Sri Tebrau, 80050 Johor Bahru, which is the first defendant's address.

[5] Based on Land Administrator's records, the second defendant's address is No. 2, Jalan Padi Huma 3, Bandar Baru Uda, 81200 Johor, and the third defendant's address is No. 8, Jalan Dian 14, Taman Munshi Ibrahim, 81200 Johor Bahru, Johor.

[6] A land reference proceeding was held at the High Court *via* Suit No. 15-20-2010. On 4 November 2011, the High Court, assisted by two assessors, held that the Land Administrator had made an overpayment of the compensation award amounting to the overpaid amount, ie, RM3,518,634. The relevant part of the land reference order states as follows:

> ... MAKA MAHKAMAH DENGAN INI MEMERINTAHKAN bahawa jumlah lebihan pampasan berjumlah RM3,518,634.00 dipulangkan kepada Pemohon ...

[7] On 29 May 2012, the Land Administrator by way of a letter requested the defendants to return the overpaid amount to the plaintiff. The said letter was addressed to the first defendant's address at No. 8, Jalan Cokmar, Taman Sri Tebrau, 80050 Johor Bahru, for all three defendants. The defendants did not respond to the said letter. The overpaid amount remains unreturned to the plaintiff. Hence, the plaintiff filed the originating summons in court on 3 November 2016.

[8] The initial originating summons was amended twice. Prior to the amendments, the third defendant had filed an application to strike out the plaintiff's initial originating summons. The application was rejected by this court. The third defendant appealed to the Court of Appeal *via* civil appeal no. J-02(IM)(NCVC)-840-04-2017. The Court of Appeal set aside the High Court's ruling and allowed the third defendant's appeal (see *Siaw Swee Mie v. Lembaga Lebuh Raya Malaysia* [2018] 4 CLJ 196).

[9] The decision of the Court of Appeal was later set-aside by the Federal Court after the plaintiff had successfully obtained leave to appeal to the Federal Court. The Federal Court remitted the case back to the High Court for the merits to be heard.

The Plaintiff's Cause Of Action

[10] The plaintiff's claim is based on the common law principle of unjust enrichment. The plaintiff avers that based on the land reference order dated 4 November 2011, the High Court found that the Land Administrator had made an overpayment of the compensation award amounting to the overpaid amount to the defendants. Therefore, the defendants were supposed to refund the said overpaid amount to the plaintiff upon receiving the request from the Land Administrator. The defendants failed to return the overpaid amount. As such, the defendants have enriched themselves at the expense of the plaintiff.

[11] Under the above circumstances, it would be unjust for the defendants to keep and benefit from the overpaid amount leaving the plaintiff without recourse to recover its overpaid amount. As a result of the defendants' refusal to comply with the request from the Land Administrator to refund the overpaid amount, the plaintiff has no alternative but to file this claim against the defendants

The Defendants' Objections

[12] The defendants have raised several objections opposing the plaintiff's claim. This court observes that the main arguments put forth by the defendants objecting to the plaintiff's claim are as follows:

(i) the plaintiff has no *locus standi* to initiate the claim, the correct party to claim for the overpaid amount should be the Land Administrator;

(ii) the defendants were not aware and were not made a party to the application for the extension order;

(iii) the land reference order could not be binding on the defendants because they were not a party to the said land reference order;

(iv) that the land reference order was not made in accordance with the Act;

(v) that the plaintiff's claim is a multiplicity of proceeding and the plaintiff should be estopped from ventilating the facts again, and the plaintiff's claim is *res judicata*; and

(vi) that the plaintiff's claim is an abuse of process of the court and the intitulement is defective and thereby the claim is invalid.

[13] Of all the objections raised, items (ii) and (iii) caught the attention of this court. The court will deal with the two objections first as the outcome of the discussion could affect the root of the plaintiff's claim.

The Reasoning And Finding Of This Court

[14] The plaintiff's claim is essentially premised on the court decision in the land reference order. The defendants in their objections are questioning and attacking the effect and legality of the extension order which led to the land reference order decided by the previous High Court as well as the legality and binding effect of the land reference order. In form and substance, the defendants are relying on a collateral attack of two orders made by another High Court before this High Court. Hence, it is incumbent upon this court to discuss whether there is any basis for this court to set aside the extension order and the land reference order made by another High Court of concurrent jurisdiction.

[15] Section 47(3) of the Act states that 'every such written decision or award shall be deemed to be a decree and the statement of the grounds of any such award a judgment within the meaning of the law for the time being in force relating to civil procedure.' Hence, a decision or an award of the land reference court cannot be treated differently from a High Court judgment.

[16] The question is: whether this court can set aside the extension order and land reference order made by a court of concurrent jurisdiction? It is trite law that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction (see *Hock Hua Bank Bhd v. Sahari Murid* [1980] 1 LNS 92; [1981] 1 MLJ 143; *Puah Bee Hong @ Bee Hong (F) & Anor. v. Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Robert Teo Keng Tuan, Intervener) & Another Case* [1994] 2 CLJ 705; [1994] 2 MLJ 601, SC).

[17] However, there are exceptions to the general rule. In *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393, the apex court observed that if a final judgment of the High Court could be proved null and void on ground of illegality or lack of jurisdiction, the aggrieved party is entitled to have it set aside *ex debito justitiae* by another High Court exercising the inherent jurisdiction of the court, without the need to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity, while referring to the Privy Council decision of *Isaacs v. Robertson* [1985] AC 97. In the judgment of Mohd Azmi FCJ (as he then was), at p. 93 (CLJ); p. 409 (MLJ), His Lordship stated as follows:

> The Privy Council through Lord Diplock also emphasised that the courts of England have not closed the door as to the type of defects in the final judgment of the court that can be brought into category that attracts *ex debito justitiae* the right to have it set aside without going into the appeal

> procedure, 'save that specifically it includes orders that have been obtained in breach of rules of natural justice' ... For my part, I must hasten to add that apart from breach of rules of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court *ex debito justitiae* to a category of cases involving orders which contravened 'any written law', the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction. It should not for instance be applied to a defect in a final order which has contravened a procedural requirement of any written law. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself within the special exception.

[18] One of the glaring exceptions to the general rule as observed by the apex court is that when the court finds there is a breach of natural justice, it instantly attracts the inherent jurisdiction of the court to set aside the order of another High Court *ex debito justitiae* without going into the appeal procedure.

[19] It is observed that the apex court is not ready to allow the expansion of the exception to include 'a defect in a final order which has contravened a procedural requirement of any written law.' Hence, the defendants' objection that the land reference order was made in non-compliance to s. 47(1) and (2) of the Act may not be sustainable to attract the court's jurisdiction to set aside the order of another High Court *ex debito justitiae* without going through the normal procedure of appeal.

[20] However, the objection raised by the defendants is that the extension order and land reference order were made without the defendants being given an opportunity to be heard. The defendants were not notified of the application of enlargement of time to file Form N by the plaintiff or of the land reference proceeding. These contentions suggest the rule of natural justice has been violated.

[21] In pith, the defendants are relying on the trite law that no court has jurisdiction inherent or otherwise over any person other than those properly brought before it (see *Kheng Chwee Lian v. Wong Tak Thong* [1983] 2 CLJ 191; [1983] CLJ (Rep) 195; [1983] 2 MLJ 320, p. 323, FC; *Yee Seng Plantations Sdn Bhd v. Kerajaan Negeri Terengganu & Ors* [2000] 3 CLJ 666; [2000] 3 MLJ 699, p. 707, CoA).

[22] The jurisprudence behind the trite law is interweaved with the rule of natural justice of *audi alteram partem* – 'listen to the other side', it also means the right to be heard. It is said that 'the mere fact that a decision affects rights or interests is sufficient to subject the decision to the procedures required by natural justice'.

[23] With regard to contention that the defendants were not served with the application for the enlargement of time to file Form N, this court refers to the decision of the Court of Appeal in *Damai Motor Kredit Sdn Bhd v. Kementerian Kerja Raya Malaysia* [2015] 1 CLJ 44, p. 55. The paymaster in this case obtained an order for extension of time to file Form N objecting to the Land Administrator's award. The application was made without naming the landowner as a party in the proceeding. One of the issues that arose before the Court of Appeal for determination was whether the order granting the paymaster the extension of time to file the objection was regularly obtained. It was held as follows:

> ... Though we agree that there is no provision in the Act or in any case law which lay down the rule that an application for extension of time must be served on an interested person other than the Land Administrator, in the circumstances of the case, we think that justice would require the application to be served on the appellant ... Clearly therefore, the appellants are interested parties and their interest would be affected by any order to be made by the court in allowing the extension of time for the respondent to file an objection to the award

[24] In this instant case, the award of compensation was made on 18 July 2005. A year later, sometime in July 2006, the plaintiff filed an application for the extension of time to file Form N. Three years later, by consent an order for extension of time to file Form N was recorded by the court on 7 October 2009.

[25] This court, after considering the legal proposition of the Court of Appeal in *Damai Motor Kredit*, is of the considered view that the plaintiff or the Land Administrator should have notified the defendants of the plaintiff's application for extension of time to file Form N as there was ample time to do so. The extension order was obtained by consent of the Land Administrator, therefore the more so the defendants ought to have been notified before the extension order was made. This is because should there be a reduction of the award by the land reference court, it would definitely affect the interest of the defendants.

[26] In the circumstances of the present case, this court opines that justice ought to lean in favour of the defendants in that they ought to have been notified of the extension of time application and to have been served a copy of the same based on the legal proposition in *Damai Motor Kredit*.

[27] Although the Court of Appeal decision in *Damai Motor Kredit* was decided after the events of the present case, the general principle of rule of natural justice is germane and applicable in this instant case. The court finds there was a breach of natural justice in so far as the extension order is concerned against all the three defendants.

[28] Further, the order for enlargement of time to file Form N was obtained by consent. It was not obtained because of any special circumstances as the court may think fit as is required under s. 38(4) of the Act. There could be an issue whether the consent order for enlargement of time to file Form N had contravened s. 38(4) of the Act.

[29] With regard to the land reference order, the defendants' counsel argue that the defendants were not notified of the extension order and were not given notice of the land reference proceeding. They were not given a right to be heard in the land reference proceeding. Therefore, the land reference order should not be binding on the defendants.

[30] In case law, the High Court has held that the landowner ought to be allowed to defend his interest, whether he has accepted the award with or without protest, in a proceeding brought by the paymaster. In *Ng Kam Loon & Ords v. Director of Public Works Department, Johore & Anor* [1990] 1 LNS 23; [1990] 2 MLJ 229, the High Court in *obiter* held as follows:

> In the end, to my mind, it boils down to this. The plaintiffs having accepted without protest and consented to the Collector's offer, cannot now have their claim referred to the court. However, should there be a proper objection to the award, they are not precluded from defending the award ...

[31] In literature, the learned author KV Padmanabha Rau in *Land Acquisition in Malaysia: Cases and Commentaries, Kuala Lumpur*: ILBS, (2000), p. 306, commented as follows:

> However, if at the instance of the person or authority on whose behalf any land is acquired and reference is made in which no notice is issued to the land owner since he has accepted the compensation without protest, it will lead to an embarrassing situation if the Court were to reduce the amount of compensation without hearing the landowner thereby affecting his rights. Such a reduction, if made will also be gross violation of the most basic principles of natural justice, that is, an opportunity of being heard before any adverse is passed affecting his right or interest ... .

[32] The learned author's view was made in reference to the case of *Setia Usaha Tetap Kementarian Pelajaran v. Collector of Land Revenue, Butterworth* [1972] 1 LNS 131; [1972] 2 MLJ 155. In that case, a notice was issued to the landowner; and the landowner participated in the reference proceeding during which the award was reduced by the court. In those circumstances, there was no breach of the principle of natural justice, the learned author proffered.

[33] In a recent Federal Court decision in *Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor And Other Appeals* [2018] 4 CLJ 285, the apex court held that there is a difference between the treatment of the right to intervene

in a land reference proceeding of a landowner and that of a paymaster. The apex court when considering the decision of the Court of Appeal of *Damai Motor Kredit Sdn Bhd (supra)* stated as follows:

> [35] The High Court dismissed the SIC which led to the appeal by the appellants to the Court of Appeal. The Court of Appeal allowed the appellants' appeal and *inter alia* held that clearly the appellants in the *Damai Motor Kredit* case were persons interested who were within the contemplation of s. 2 of the Act. The position of the appellants/landowner in the *Damai Motor Kredit* case was clearly made out, where their interests were at stake as landowners. The question of them applying to be made interveners did not arise at all. They were the original parties in the proceedings before the Land Administrator. As such, they ought to be named in the OS proceedings by the respondent.
>
> [36] We are of the view the Court of Appeal in the *Damai Motor Kredit* had rightly ruled that the learned High Court Judge was in error when he denied the appellants' application to be made interveners. With respect, however, the same cannot be said of TNB in our instant appeal. As was alluded to in the preceding paragraphs of this judgment, the factual matrix of the present case would not warrant a similar treatment for TNB.
>
> [37] It is our judgment that TNB had no legal interest in the land reference proceedings. TNB being the paymaster, it had at the highest only a pecuniary interest. (See the case of *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344). The evidence in the present case showed that TNB was not aggrieved by the award but was merely apprehensive that the outcome of the land reference proceedings in the High Court may adversely affect its pocket. At any rate, TNB's rights on whose behalf acquisition proceedings were instituted (see s. 43 of the Act) and whose interests must be considered by the court whether they have objected or not (see s. 44(2) of the Act) without the need for intervention.
>
> [38] We are of the view that it was for the Land Administrator to defend the award and, as declared by the Privy Council in the case of *Collector of Land revenue v. Alagappa Chettiar* [1968] 1 LNS 31; [1971] 1 MLJ 43, the Land Administrator was fully entitled to lead such evidence as he considered necessary to do so.

[34] The legal propositions from the above excerpt can be summarised as follows: first, a landowner is the original party in the proceedings before a Land Administrator, and his interest is at stake as the landowner. Secondly, a paymaster has no legal interest in the land reference proceedings brought through an objection raised by a landowner, the paymaster has at the highest only a pecuniary interest. Thirdly, a decision of the land reference court to reduce the award would affect the landowner's interest; whereas, if the award were to be increased, it would not aggrieve any legal interest of the paymaster in the land. Lastly, and most importantly, the right to be heard must be

accorded to a landowner in a land reference proceeding which is brought by a paymaster, but not *vice versa*. This is because the Land Administrator is supposed to defend the award, not the paymaster, in the event an objection is raised against the Land Administrator's award by a landowner or another person whose property is affected by the award.

[35] Based on the above analysis of the legal propositions of the apex court, this court agrees that the defendants ought to have been given a right to be heard in the land reference proceeding.

[36] Based on the above findings, this court finds that a breach of natural justice, *vis-à-vis* right to be heard, has indeed occurred on two occasions. One was during the application for the enlargement of time to file Form N which all three defendants were not given a right to be heard. Another one was at the hearing of the land reference proceeding which led to the decision of the land reference order which all three defendants were not given a right to be heard.

[37] Based on the exception to the general rule, as discussed earlier, the extension order was made in violation of natural justice. Hence, it attracts the inherent jurisdiction of this High Court to set aside the extension order *ex debito justitiae* without the defendants having to go through an appeal procedure. As a result, the subsequent proceeding premised on the extension order was irregular. The land reference order which was made based on an irregular proceeding must fall.

[38] Based on the foregoing finding, it is unnecessary for this court to dwell into the submissions of the parties in relation to the *locus standi* of the plaintiff to sue and also whether the plaintiff has established the elements of unjust enrichment in its claim.

[39] On the objection of multiplicity of proceedings, estoppel and *res judicata*, this court is of the view that the plaintiff's claim is not questioning whether the Land Administrator's award should or should not be reduced. This has been dealt with at the land reference proceeding.

[40] The plaintiff's claim is premised on the pronouncement of the land reference court, *vis-à-vis* the land reference order. It is a claim of 'unjust enrichment' and restitution. There is no regurgitation of facts of what the fair market value of the scheduled land is in the plaintiff's pleaded case. Therefore, the objections of multiplicity of proceedings, estoppel and *res judicata* are misconceived.

[41] On the issue of abuse of process of court and defective intitulement, this court has considered the two contentions raised by the defendants' counsel. However, the outcome of the finding will not affect the above substantive finding of this court which leads to the final conclusion and decision of this court.

[42] In conclusion, based on the above analysis and findings, this court is of the considered view that the plaintiff has failed to sustain its claim that is premised on the land reference order which must fall on the ground that the land reference proceeding was irregularly brought as a consequence of the extension order being set aside on ground of violation of natural justice.

Conclusion

[43] For the above reasons, this court dismisses the plaintiff's claim and orders that the plaintiff to pay costs of RM10,000 (subject to allocator fees) each to the three defendants.